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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
WALKER RIVER PAIUTE TRIBE,)
)
Plaintiff-Intervenor,)
vs.)
)
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
)
Defendants.)
)

Case No. 3:73-CV-00127-MDD-WGC

**MINERAL COUNTY AND
WALKER LAKE WORKING
GROUP ANSWER TO AMENDED
COUNTERCLAIM OF THE
UNITED STATES OF AMERICA
FOR WATER RIGHTS
ASSERTED ON BEHALF OF THE
WALKER RIVER PAIUTE
INDIAN TRIBE**

Counterdefendants Mineral County, Nevada, and Walker Lake Working Group
("MC/WLWG"), pursuant to the Court's Stipulated Scheduling Order and Discovery Plan dated
March 7, 2019 (ECF No. 2437), hereby file this Answer to the Amended Counterclaim of the
United States of America for Water Rights Asserted on Behalf of the Walker River Paiute Indian
Tribe, dated May 3, 2019 (ECF 2477-1) ("Amended Counterclaim"). In answering the
allegations of the Amended Counterclaim, MC/WLWG affirm, deny and allege as follows:

INTRODUCTION

1
2 1. The allegations in Paragraph 1 of the Amended Counterclaim amount to legal
3 conclusions which do not require a response. However, to the extent that the allegations in
4 Paragraph 1 simply state the United States' articulation of its own claim, MC/WLWG admit.
5 Because MC/WLWG does not have sufficient information to admit or deny the validity of such
6 claim, MC/WLWG's admission does not extend to the validity of that claim, and is limited to a
7 recognition that this paragraph articulates the United States' understanding of its own claim.
8

JURISDICTION

9
10 2. MC/WLWG admit the allegations in Paragraph 2 of the Amended Counterclaim.
11

PARTIES

12
13 3. MC/WLWG admit the allegation in Paragraph 3 of the Amended Counterclaim.

14 4. MC/WLWG admit the allegation in Paragraph 4 of the Amended Counterclaim.
15

GENERAL ALLEGATIONS

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17 5. MC/WLWG admit the allegations in Paragraph 5 of the Amended Counterclaim.

18 6. MC/WLWG admit the allegations in Paragraph 6 of the Amended Counterclaim.

19 7. MC/WLWG admit the allegations in Paragraph 7 of the Amended Counterclaim.

20 8. On information and belief, MC/WLWG admit the allegation in Sentence 1 of
21 Paragraph 8 of the Amended Counterclaim which states that subsequent to the entry of the
22 Walker River Decree numerous persons and other entities have appropriated additional waters
23 from the Walker River and its tributaries. MC/WLWG do not have sufficient information to
24 admit or deny the allegation that water uses post-dating the entry of the decree have not been
25 subject to any administrative process, and on that basis must deny it.
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27
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FIRST CLAIM FOR RELIEF

WEBER RESERVOIR

9. Paragraph 9 of the Amended Counterclaim incorporates by reference the previous 8 paragraphs of the Amended Counterclaim. MC/WLWG hereby incorporate by this reference our previously stated responses to Paragraphs 1-8 as our response to Paragraph 9.

10. On information and belief, MC/WLWG admit the allegations contained in Sentences 1 and 2 in Paragraph 10 of the Amended Counterclaim. MC/WLWG do not have sufficient information to admit or deny the allegation in Paragraph 10 that the United States, for the benefit of the Walker River Paiute Tribe, is entitled to store water from the Walker River in Weber Reservoir for all purposes recognized under federal law, including but not limited to irrigation, stock watering, fish and wildlife, and domestic uses, and on that basis must deny it.

11. MC/WLWG do not have sufficient information to admit or deny the allegation in Paragraph 11 of the Amended Counterclaim that the Tribe is able to irrigate more than the 2,100 acres that is entitled to irrigate under the terms of the final Decree, and on that basis must deny it.

12. MC/WLWG do not have sufficient information to admit or deny the allegation in Paragraph 12 of the Amended Counterclaim that the claimed right to store water in Weber Reservoir has a priority date of April 15, 1936, or that the United States, on behalf of the Walker River Paiute Tribe, is entitled to store up to the capacity of the reservoir, approximately 13,000 acre-feet, at any given time inclusive of evaporation and seepage, and on that basis must deny them.

SECOND CLAIM FOR RELIEF

LANDS RESTORED AND ADDED TO WALKER RIVER RESERVATION

13. Paragraph 13 of the Amended Counterclaim incorporates by reference the

1 previous 12 paragraphs of the Amended Counterclaim. MC/WLWG hereby incorporate by this
2 reference our previously stated responses to Paragraphs 1-12 as our response to Paragraph 13.

3 14. MC/WLWG admit the allegation in Paragraph 14 of the Amended Counterclaim.

4 a. MC/WLWG admit the allegation in Paragraph 14(a) of the Amended
5 Counterclaim.

6 b. MC/WLWG admit the allegation in Paragraph 14(b) of the Amended
7 Counterclaim.

8 c. MC/WLWG admit the allegation in Paragraph 14(c) of the Amended
9 Counterclaim.

10 d. MC/WLWG admit the allegation in Paragraph 14(d) of the Amended
11 Counterclaim.

12 15. MC/WLWG do not have sufficient information to admit or deny the allegation in
13 Paragraph 15 of the Amended Counterclaim that the United States, for the benefit of the Walker
14 River Paiute Tribe, is entitled to use water from the Walker River, its tributaries, and all other
15 water located in, on, under, adjacent or otherwise appurtenant to the restored and added lands of
16 the Reservation for all purposes recognized under federal law, and on that basis must deny it.

17 Because MC/WLWG do not have sufficient information with regard to this allegation,
18 MC/WLWG also do not have sufficient information to admit or deny the United States' claim
19 that it is entitled to a priority right as of the date land was restored or added to the reservation,
20 and on that basis must deny it.

21 16. MC/WLWG do not have sufficient information to admit or deny the allegation in
22 Paragraph 16 of the Amended Counterclaim that the United States, for the benefit of the Walker
23 River Paiute Tribe, is entitled to water rights for the restored and added lands in addition to the
24

1 rights now recognized for use on the lands of the Reservation under the Decree, and on that basis
2 must deny it.

3
4 **THIRD CLAIM FOR RELIEF**

5 **GROUNDWATER FOR ALL LANDS WITHIN WALKER RIVER RESERVATION**

6 17. Paragraph 17 of the Amended Counterclaim incorporates by reference the
7 previous 16 paragraphs of the Amended Counterclaim. MC/WLWG hereby incorporate by this
8 reference our previously stated responses to Paragraphs 1-16 as our response to Paragraph 17.

9 18. MC/WLWG do not have sufficient information to admit or deny the allegation in
10 Paragraph 18 of the Amended Counterclaim that the United States, for the benefit of the Walker
11 River Paiute Tribe, is entitled to use the groundwater of the Walker River Basin located in,
12 under, adjacent or otherwise appurtenant to all lands of the Reservation, and on that basis must
13 deny it.
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15 19. Because MC/WLWG do not have sufficient information with regard to Paragraph
16 18 of the Amended Counterclaim, MC/WLWG also do not have sufficient information to admit
17 or deny the allegation that the United States, for the benefit of the Walker River Paiute Tribe, is
18 entitled to the amount of water necessary to fulfill the purposes of the Reservation, and on that
19 basis must deny it.
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21 20. Because MC/WLWG do not have sufficient information with regard to paragraph
22 18 of the Amended Counterclaim, MC/WLWG also do not have sufficient information to admit
23 or deny the allegation that the United States, for the benefit of the Walker River Paiute Tribe, is
24 entitled either to a priority date of either November 29, 1859, for lands that have remained within
25 the original Reservation since that time, and which have continuously been held in trust for the
26 Tribe, or the date land was restored or added to the Reservation, and on that basis must deny it.
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1 WHEREFORE, MC/WLWG pray that:

2 1. The Court expressly acknowledge, in any decree or judgment resulting from this
3 subproceeding, that any additional rights granted to the United States on behalf of WRPT must
4 be incorporated in the determination of the minimum average inflows to Walker Lake required
5 under the public trust doctrine, should the Court determine that the public trust doctrine requires
6 that average minimum inflows be provided to Walker Lake to return the Lake to a reasonable
7 state of health that would restore and maintain Walker Lake's public trust uses and values.
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9 Respectfully submitted this 1st day of August, 2019,
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11
12 Simeon M. Herskovits

13 Simeon M. Herskovits, Nevada Bar No. 11155

14 Iris Thornton, *pro hac vice*

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16 ENVIRONMENT

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28

*Attorneys for Appellants Mineral County, Nevada and
Walker Lake Working Group*

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2019, service of **MINERAL COUNTY AND
WALKER LAKE WORKING GROUP ANSWER TO AMENDED COUNTERCLAIM
OF THE UNITED STATES OF AMERICA FOR WATER RIGHTS ASSERTED ON
BEHALF OF THE WALKER RIVER PAIUTE INDIAN TRIBE** was made through the
court's electronic filing and notice system to all of the registered participants.

By /s/ Simeon M. Herskovits
Simeon M. Herskovits